

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WADE MITCHELL,

Plaintiff,

Case No. 24-cv-671-pp

v.

MARTIN J. O'MALLEY,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING FILING FEE (DKT. NO. 2)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

Federal law requires a person who files a complaint in federal court to pay \$405—a filing fee of \$350 (28 U.S.C. §1914(a)) and a \$55 administrative fee (Judicial Conference of the United States District Court Miscellaneous Fee Schedule Effective the December 1, 2023, #14). To allow the plaintiff to proceed without prepaying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff's affidavit indicates

that the plaintiff is married, neither he nor his spouse are employed, and they have a 10-year-old son they are responsible for supporting. Dkt. No. 2 at 1. The plaintiff states that in 2023, he and his spouse received \$6,660 from the Department of Workforce Development and \$12,138.75 from Cutting Edge Staffing—this comes to approximately \$1,566 per month. Id. at 2. The plaintiff lists expenses of \$2,050 per month (\$1,050 rent, \$300 credit card payments, \$700 other household expenses). Id. at 2-3. The plaintiff does not own his home or any other property of value; he owns a 2011 Nissan Quest, worth approximately \$2,157; he has no cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff states, “I have been unemployed since 2020-21(?) due to being physically unable to work. We depend on state Foodshare and health insurance already due to this. My wife is struggling to pay rent and utilities.” Id. at 4. The plaintiff has demonstrated that he cannot pay the \$405 fee.

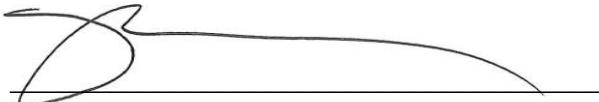
The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff filed his complaint using this court's standard form. Dkt. No. 1. The complaint indicates that the plaintiff is seeking review of an unfavorable decision by the Commissioner denying benefits and that the Commissioner's unfavorable conclusions and findings of fact when denying benefits are not supported by substantial evidence and/or are contrary to law and regulation. Id. at 3. In addition, the plaintiff states, "I am 44 years old with a history of seizures and head injuries. Memory loss and confusion happen frequently. I have had 9 surgeries since 2018 which were all disasters.— uns[u]ccessful. Loss of motor skills in hands frequently. Nerve damage in both elbows. A lot of hardware in both feet and lost a toe. Physically and mentally unable to gain and keep any type of employment." Id. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

Dated in Milwaukee, Wisconsin this 3rd day of June, 2024.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge